

# State of Colorado



Bill Owens  
*Governor*

Richard Djokic  
*Director*

## DPA

Department of Personnel  
& Administration

State Personnel Board

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### Meeting Minutes June 15, 2004

The State Personnel Board met in public session on Tuesday, June 15, 2004, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, Board members Diedra Garcia, Elizabeth Salkind, and John Zakhem were present. Board member Linda Siderius was absent.

Richard Djokic, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, General Professional III, were present in person.

## **I. REQUESTS FOR RESIDENCY WAIVERS**

### **A. June 1, 2004 Report on Residency Waivers**

Mr. Djokic reported that there was one residency waiver request which was granted this month.

## **II. PENDING MATTERS**

### **A. Outstanding Motions**

1. Harlen Ainscough v. Department of Public Health and Environment,  
State Personnel Board case number 2003G114.

Mr. Zakhem moved to affirm the April 27, 2004 Order of the State Personnel Board Denying Petition for Hearing and to deny Complainant's Motion for Reconsideration. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms.

Lottner. Ms. Salkind abstained from voting. Ms. Siderius was absent.

**III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions or other final Orders of the Administrative Law Judges or the Director on appeal to the State Personnel Board this month.

**IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Carol Roberson v. Regents of the University of Colorado, University of Colorado Health Science Center, State Personnel Board case number 2002G145.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Board's Director and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius was absent.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. James Masse v. Department of Corrections, State Personnel Board case number 2003B077.

On May 10, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's termination of Complainant's employment was not arbitrary, capricious or contrary to law. The ALJ ordered that Respondent's action is affirmed.

Upon review the Initial Decision of the Administrative Law Judge, Ms. Salkind requested that the names of the parties be corrected (to read "Complainant" instead of "Respondent") in several places, beginning on page 5, paragraph 11, and that an Amended Initial Decision be issued reflecting those corrections.

**VI. REVIEW OF THE MINUTES FROM THE MAY 18, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Zakhem moved to approve the minutes of the May 18, 2004 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the

affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Salkind abstained from voting because she was not present at the May 18, 2004 meeting. Ms. Siderius was absent.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS May 18, 2004 PUBLIC MEETING:**

- A. Denise Martinez v. Department of Personnel and Administration, Executive Office, State Personnel Board case number 2003B118.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

- B. Greg Bailey v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2004B043.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

- C. LaVonne Taylor v. Department of Education, Colorado School For the Deaf and the Blind, State Personnel Board case number 2003G095(C).

The Board voted to affirm the Dismissal Order issued by the Administrative Law Judge.

- D. Robert Smoke v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2004G025.

The Board voted to adopted the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Melissa Rutter v. Regents of the University of Colorado, University of Colorado at Boulder, Department of Public Safety, State Personnel Board case number 2004G032.

The Board voted to adopt the Preliminary Recommendation of the Board's Director and deny the petition for hearing.

- F. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B127.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant a petition for hearing on the issue of whether the Department of Corrections' actions relating to retention rights and the subsequent changes in the position were arbitrary or capricious.

## VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Pat Romero, Department of Personnel and Administration (DPA), Division of Human Resources, presented a report on behalf of Jeff Schutt, Director of the Division, with respect to the following topics:

- Rulemaking: The passage of HB 04-1446 required that the Personnel Director adopt rules regarding employment with more than one department. The Director adopted a procedure on an emergency basis effective June 5, 2004. The June 30, 2004 rulemaking hearing will deal with permanent rules to address this issue. In addition, there will be another rulemaking notice issuing on June 18, 2004, regarding the repeal of risk rules.
- Performance evaluations: Performance evaluations will be "wrapped up" soon and statistics on those evaluations will be provided to the Board in July.

## IX. ADMINISTRATIVE MATTERS & COMMENTS

### A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Mandate/Order Affirmed in Rigaud v. Department of Corrections, Correctional Industries, State Personnel Board case number 2002B050, Court of Appeals No. 02CA1961

In addition to the above matters, Director Djokic reported that training was under consideration for the judges. The Director also called attention to the fact that the next Board meeting will be held at the Department of Natural Resources, 1313 Sherman Street, Room 318. Mr. Zakhem asked that this information be highlighted on the Agenda for the next Board packet. Copies of letters from the Board Chair to the families of Paul Forster and Eladio Lopez, Department of Transportation employees, and to Richard Forman were distributed to the Board members.

Board Counsel Forman provided a general legal report on the Venard case, which is scheduled for oral argument on August 31, 2004, noting that he had filed a separate brief in the matter on behalf of the Board. He also discussed the May 24, 2004 opinion from the Colorado Supreme Court, Ainscough v. Owens, a case concerning policy changes by the Governor that reversed a long-standing policy of allowing payroll deductions for labor association dues. The labor associations, the Colorado Association of Public Employees (CAPE), the American Federation of State, County, and Municipal Employees (AFSCME), and the Colorado Federation of Public Employees (CFPE), sued the Governor and the Personnel Director, but the trial court dismissed the case and the

Court of Appeals affirmed the dismissal, citing lack of standing on the part of the plaintiffs. The Colorado Supreme Court reversed the dismissal and remanded the case to the district court.

On a personal note, Mr. Forman thanked the Board for the opportunity to provide his legal services to the Board over the past two years as Board Counsel. At that point in the meeting, Ms. Lottner and Mr. Djokic presented a certificate of appreciation to Mr. Forman on behalf of the Board.

Ms. Garcia inquired as to the identity of the new member of the Board who would be replacing Ms. Lottner, whose term ends June 30, 2004, and Mr. Djokic responded that he had received an email from Barb Card, which indicated that the Governor "had someone in mind."

Mr. Zakhem thanked the Board Chair, Ms. Lottner, for her two-year tenure as Board Chair; Ms. Lottner, in turn, thanked the Board and Board staff for their assistance to her over the past two years.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

The Board did not go into Executive Session and the meeting ended by consensus.

**X. EXECUTIVE SESSION**

A. Case Status Report

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**APPROVED THIS 20th DAY OF JULY, 2004.**

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Joyce Lottner, Chair

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John Zakhem, Vice Chair

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Diedra Garcia, Member

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Elizabeth Salkind, Member